IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 1952 of 1997

Between:

1. Dasari Suryachander Rao s/o. Nageswararao, aged 5 years

2. Dasari Nageswararao s/o. Nageswararao, aged 12 years

3. Dasari Subhrahmani w/o. Nageswararao, aged about 27 years

(petitioners 1 and 2 being minors, represented by mother and natural guardian – 3rd petitioner)

..... PETITIONERS

AND

1. The Mandal Revenue Officer, Devipatnam

2. The Director of Settlements, Hyderabad

3. The Commissioner of Settlements, Survey & Land Records, Hyderabad.

4. The Settlement Officer, Rajahmundry,
East Godavari District.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records relating to Case No.13/687/87 on the file of the 3rd respondent, confirming the orders of the 2nd respondent made in A.P.No.369/77 and 4th respondent made in Case No.2858 and issue writ of certiorari or any other appropriate writ, order or direction quashing the order of the 3rd respondent made in 13/687/87 confirming the orders of the 2nd respondent made in A.P.No.369/77 and 4th respondent made in Case No.2858.

Counsel for the Petitioners: MR.M.LAKSHMANA SARMA

Counsel for the Respondent Nos.1 to 4 : GP FOR SOCIAL WELFARE

The Court made the following :

ORDER:

Dasari Suryachander Rao and others filed the present Writ Petition to call for the records relating to case No.13/687/87 on the file of 3rd respondent confirming the orders of 2nd respondent made in A.P.No.369/77 and 4th respondent made in Case No.2858 and issue a writ of certiorari or any other appropriate writ, order or direction quashing the order of the 3rd respondent made in Case No.13/687/87 confirming the orders of the 2nd respondent made in A.P.No.369/77 and the 4th respondent made in Case No.2858 and to pass such other suitable orders.

Sri Srinivas Rao, representing Lakshmana Sarma, the learned Counsel for the writ petitioners made the following submissions. The

learned Counsel at the outset had drawn the attention of this Court to a decision of this Court in KAKARLA NAGESWARA RAO AND OTHERS and had explained that in the light of the ratio laid down in the aforesaid decision the very order of the Primary Authority is not sustainable who had exercised the suo motu powers. The learned Counsel also maintained that there is total non-application of mind by the Primary Authority inasmuch as though Document No.499 had been referred to, a wrong date relating to the sale deed had been specified and the recitals in the sale deed and the other relevant aspects had not been taken into consideration at all and a quasi-judicial authority who is bound to record intelligible reasons on appreciation of the material had not exercised the powers in accordance with law and inasmuch as the order of the Primary Authority itself is devoid of any reasons, the same cannot be improved by the higher authorities in the hierarchy. The learned Counsel also had taken this Court through the other orders made by the higher authorities in the hierarchy inclusive of the impugned order and would maintain that in the light of the peculiar facts and circumstances it is clear that reasonable opportunity had not been given to Dasari Suranna, the original petitioner, who is no doubt no more and hence the legal representatives of Dasari Suranna who are now prosecuting the present litigation are to be afforded with reasonable opportunity and hence the orders which had been

questioned in the present Writ Petition are liable to be quashed.

Per contra, the learned Government Pleader for Social Welfare had drawn the attention of this Court to the fact that the interim order already had been vacated in W.V.M.P.No.1176/2001. The learned Counsel also maintained that inasmuch as the transaction is subsequent to Regulation 1 of 1970, as a question of fact, the authorities had recorded that the said transaction is null and void and hence the said finding need not be disturbed by the writ Court exercising powers under Article 226 of the Constitution of India.

Heard both the Counsel.

As can be seen from the record, the interim order was granted on 6-2-1997 in W.P.M.P.No.2292/97and in W.V.M.P.No.1176/2001, by the order dated 13-6-2002, the same was vacated on the ground that in the counter affidavit it was asserted that before granting stay of eviction, possession was taken by Government on 19-1-1997 pursuant to the eviction order passed by the Settlement Officer and Director of Settlement as confirmed by the Commissioner of Survey, Settlements and Land Records, A.P., Hyderabad and in view of the same, interim stay granted by this Court dated 6-2-1997 is accordingly vacated.

The 4th respondent herein, Settlement Officer, Rajahmundry, had taken up suo motu enquiry under Section 9 of Regulation 2 of 1970

for the grant of Ryotwari patta in respect of S.No.309/2 of an extent of Hec.1.71 A situate in Indukuru village of erstwhile Rampachodavaram taluq of East Godavari District. This village was part of Polavaram-B Zamin Estate taken over by the Government on 7-9-1949 under the provisions of A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948. In the light of the first proviso of Section 7(1) of Regulation 2 of 1970, the 4th respondent herein rejected the claim of Dasari Suranna, at present who is no more, on the ground that a non-tribal purchased the land from Sri Devara Pydiraju under Document No.499 dated 22-4-1970 and the sale transaction is null and void in terms of Regulation 1 of 1959 as amended by Regulation 1 of 1970. Aggrieved by the same, the matter was carried to the 2nd respondent who had confirmed the order of the Primary Authority by his order dated 29-10-1980. The matter was further carried to the 3rd respondent herein who had remanded the case and on remand also the 2nd respondent arrived at a conclusion that the transfer had taken place after the notified date i.e., 3-2-1970 and hence confirmed the orders of the Primary Authority and aggrieved by the same, again the petitioners approached the 3rd respondent who had confirmed the same by the impugned order. In the impugned order, the 3rd respondent after narrating several of the grounds referred to as 1 to 7, ultimately recorded reasons as hereunder :

> “The connected records have been perused. The purported agreement of sale was not filed at any stage before either in S.O. or the D.S.O. but has now been filed before this Court. No supporting evidence regarding actual transfer of possession under the agreement such as Adangal Extracts has been filed. The purported agreement to naked eye does not appear to be 27 years old and bears tell-tale marks of erasure against the name of the purchaser and hence is of the dubious nature and is disbelieved. Thus the fact remains that the transfer being subsequent to 3-2-70 is hit by Reg.1/59 as amended by 1/70 even though it is between non-tribals. The standard of evidence required for grant of patta is different from that required in a case for eviction under the A.P. (SA) L.T.R. No link documents or pre-abolition documents were produced during 23 years when the claim was before the different Settlement authorities and no reasons for failure to produce them were shown. Thus the appellants have not made out a case for grant of patta and hence the appeal is dismissed. Since the dismissal is on facts and merits, the legal issues raised and judgments cited have not been dealt with herein”.

The relevant portion of the order of the 2nd respondent dated 10-4-1987 reads as hereunder :

> “Heard arguments considered them and perused the Lower Court case file. The settlement officer rejected the claim of the appellant on the ground that the sale transaction which took place on 22-4-1970 is hit by L.R. Regulation 1/59 as amended by 1/70. Now the appellant has filed before me the registered sale deed dated 22-4-70 executed in pursuance of the sale agreement 15-10-1969.
>
> As contended by the Government Pleader transfer of title has taken place only subsequent to 3-2-1970 though it is pleaded that earlier there was an agreement of sale executed on 15-10-1969. I consider that the agreement of sale does not amount to acquisition of title, which was transferred only on 22-4-1970 which is void abinitio. Further, he has also failed to prove his lawful and continuous possession right from 1917 to the date of acquisition of title i.e., 22-4-1970. In the consequence orders of the S.O. are upheld and the Revision Petition dismissed.”

It may also be relevant to have a look at the order made by the Primary Authority who had taken up the suo motu enquiry, which is as hereunder:

> "The petitioner is a non-tribal. The record of enquiry shows that patta No.2 which co-relates to the schedule lands stands registered in the amarakam account of fasli 1385 in the name of D.Kannayya s/o. Paidaiah, non-tribal. The petitioner purchased the land from Sri Devara Pydiraju under document No.499 dated 22-4-1970 and the transaction is hit by Regulation 1/59 as amended by Regulation 1/70 and it is null and void."

These are the reasons which had been recorded by the Primary Authority.

The hierarchy of authorities dealing with property rights under the Regulation aforesaid are expected to apply the mind and record reasons while exercising the quasi-judicial powers. The specific stand taken by the writ petitioners is that the schedule lands were purchased from Pydiraju and his sons on 15-10-1969 under an agreement of sale for Rs.8000/- and possession was taken on the same day and the registration of the document was subsequent thereto and hence in the light of the same, it cannot be said that this transaction is null and void by virtue of Regulation 1 of 1970. It is no doubt true that the 3rd respondent had recorded reasons that the purported agreement of sale was not filed at any stage but the it had been filed before him. The 2nd respondent however refers to the

Photostat copy of the registered sale deed Document No.499 dated 14-4-1970, the Photostat copy of L.T.R. order passed by the Deputy Collector in his Case No.528/79 and a copy of this Court's Judgment dated 11-2-1980 in a Writ Petition. The Primary Authority though had referred to the date of sale deed as 22-4-1970 had specified the Document No.499 and even on verification of the document the recitals of the document are self-explanatory and prior agreement and delivery of possession in pursuance thereof had been specifically referred to in the said document. It is true that the document as such was registered subsequent to the notified date of Regulation 1 of 1970. In the decision referred (1) supra, while dealing with a similar question, this Court held at para-5 as hereunder :

> "The first contention centers around the provisions of Section 3(1)(a) and the definition of transfer as defined in Section 2(g). Section 3(1)(a) reads :
>
> "3. TRANSFER OF IMMOVABLE PROPERTY BY A MEMBER OF A SCHEDULED TRIBE:- (1)(a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes".
>
> It came into force with effect from 3-2-1970. Admittedly, the petitioners are non-tribals and they purchased the subject lands from non-tribals through registered sale deeds dated 22-5-1978, 23-9-1978, 21-9-1978 and 20-5-1978. Thus, if the date

of execution of sale deeds is taken as the date of transfer, there can be no objection to declare the said transfer as null and void. Learned Counsel for the petitioners does not dispute this legal position. But, his contention is that the petitioners came into possession of the subject lands prior to 3-2-1970 by virtue of agreements of sale dated 15-4-1969 and 15-7-1969. Therefore, in view of the definition of "transfer" in Section 2(g), the transfer in favour of the petitioners dates back to the date of agreements of sale. To appreciate this contention of his, it is necessary to refer to the meaning of "transfer". It reads :

"Transfer" means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property or a contract relating to such property in respect of such mortgage, lease, gift, sale, exchange or other dealing" (Section 2(g)).

It is clear from the plain reading of the above that 'transfer' includes a contract to sell. Thus, if the agreements of sale dated 15-4-1969 and 17-5-1969 set up by the petitioners are accepted as genuine, it must be held that the transfer in favour of the petitioners is not hit by Section 3(1)(a) of the Regulation. But, the Primary Authority as well as the Appellate Authority refused to accept the plea of the petitioners that the registered sale deeds were preceded by agreements of sale. The Primary Authority viz., the third respondent rejected this plea on the ground that the alleged agreements of sale have not at all been produced before him. The appellate authority viz., the second respondent rejected the said plea on three grounds –

1. It is recited in the registered sale deeds that the petitioners were put in possession of the subject lands on the date of execution of the sale deeds;

2. There is no reference to the alleged agreements of sale in the sale deeds; and

3. There is no evidence in proof of either the petitioners' possession or their paying land revenue from 1969 to 1978."

In the present case, as can be seen from the material available

on record, the Primary Authority had referred to Document No.499 wherein recitals relating to agreement of sale and delivery of possession in pursuance thereof had been specifically recited. In K.MAHALAXMI Vs. GOVT. OF A.P. while dealing with transfer of land of schedule areas in Telangana Area and validity thereof it was held at paras 31 and 32 as hereunder :

> "Firstly, it was not disputed that the transfer took place from tribal to non-tribal in 1358 Fasli and the revenue records also reveal that the mutations took place. But, this was rejected on the ground that the original registered documents were not filed, but only the certified copies of the Registered Sale Deeds were filed. Therefore, when once it is accepted that the transfer from tribal to non-tribal had taken place as early as in 1338 Fasli and there was no prohibition at all in subsequent enactments from non-tribal to non-tribal. Only in 1959 Regulation prohibiting the transfer of the lands in Agency Tracks in the Scheduled Areas from tribal to non-tribal was brought into effect and that prohibition was brought into effect in Telangana areas in December, 1963. But, however, the prohibition from non-tribal to non-tribal was also brought into effect by virtue of the Amended Regulation 1 of 1970. Subsequent to the coming into force the Regulation 1 of 1970, there was no such transactions at all. The petitioners have come into possession by way of registered gift deeds prior to coming into force the Regulation 4 of 1979. The Full Bench had categorically held that the Special Deputy Collector has no jurisdiction to decide the validity or otherwise of the documents executed prior to coming into force the Regulation. Therefore, the possession of the predeessors of the petitioners right from 1338 Fasli was governing the field in Telangana Area, yet, transactions took place in 1338 Fasli much prior to the Regulation coming into force. It is very much doubtful whether that Regulation is applicable to the facts of the present case. Inasmuch as, prohibition was only in respect of transfer from one class of agricultural land to another class of agricultural land and there was no reference to the tribal and non-tribal. The Special Deputy Collector is of the view that when Purnachandra Rao has transferred the land in favour of Gouramma and Gouramma transferred the land in favour of her two daughters by way of Registered gift deeds, the

permission of the competent authority is required under Section 47 of the Telangana Area Land Tenancy Act was not obtained, but that is an irrelevant consideration. As held by the Division Bench and also the Supreme Court in *S.Venkata Ramanaiah's case* (1995(6) SCC 545), when once the authority is held to be not having the jurisdiction in respect of the transactions which took place prior to coming into force of the Regulation equally the authorities has no jurisdiction to interfere with such transfers and it is only the competent authority under the relevant provisions is entitled to initiate the action. Admittedly, the petitioners came into possession by virtue of the registered gift deeds and such a transfer was not prohibited at the time when the registered gift deeds were executed. The transfer took place between the non-tribal and the non-tribal prior to 1970 and the prohibition came into effect only in the year 1970. The alleged reference to the transfers subsequent to 1970 are not subject matter in the suo motu proceedings. The suo motu proceedings were initiated against the writ petitioners and therefore, it was not within the province of the Special Deputy Collector to give finding that some other persons purchased the land subsequent to coming into force the Regulation 1 of 1970 and that finding is wholly extraneous to the issue under adjudication. As can be seen from the Order of the Special Deputy Collector, the respondents are only the writ petitioners and not others. Hence the possession of the petitioners with reference to the date on which the transaction took place has to be considered.

I n *S.Venkata Ramanaiah's* case (AIR 1996 SC 224), the Supreme Court has categorically held that Section 3(2)(a) cannot be applied to evict the transferee under transactions which were completed before enforcement of the Regulation and it had categorically held that Section 3(1)(a) only aims at nullifying those transfers which take place after coming into force the Regulation and when such transfers are found to be absolutely null and void, then only the question of continued illegal possession of such transferee and of evicting such transferee from the land and restoration of the land to the transferor would arise under Section 3(2)(a). Thus, even assuming for the sake of argument that the transferee was in illegal possession prior to coming into force of the Regulation, the Special Deputy Collector has no jurisdiction to evict them by invoking Section 3(1)(a) and 3(2)(a) as the transaction was not encompassed by sweep of Section 3(1)(a). The Supreme Court has observed that before continued possession is found fault with, it must be shown that initial entry of the transferee is violative of any of the provisions of the law or any subsequent

statute. Such continuation of possession originally valid transaction would get adversely affected. Section 3 nowhere whispers that eventuality. Therefore, the possession of the non-tribal prior to coming into force, whether even assuming that it is illegal cannot be disturbed under Section 3(1). Thus Section 3(1)(a) and 3(2)(a) cannot be invoked by Special Deputy Collector to declare the transactions which took place prior to coming into force Regulation of 1 of 1959. In para 25, the Supreme Court observed that when the transfers were effected prior to the coming into force the Regulation though could not be covered by this Registration, the authorities acting under the Regulations has no jurisdiction to deal with them and the Full Bench decision is very categoric on this point that the validity or otherwise of the transfers made prior to 3-6-1951 or its amended Regulation 1 of 1959 and 1 of 1970 coming into force cannot be adjudicated upon under Section 3(2) of the Regulations and the same has to be challenged in a proper forum constituted for deciding the disputes relating to immovable property situated in the scheduled areas. Therefore, even assuming for arguments sake that the Regulations prohibiting transfer by tribal to non-tribal was in force at the time when the transfer had taken place between the tribal to non-tribal, but still that cannot be decided under Section 3(2) and it has to be only agitated before the appropriate forum constituted for deciding such disputes. Therefore, on this ground also, the order of the Special Deputy Collector is illegal and is wholly without jurisdiction. Admittedly, the proceedings were initiated in 1978 on the ground that the transfer of the immovable property was made in contravention of sub-section (3) of Section 3 of Regulation 1959. Therefore, when once it is established that the transfer took place prior to coming into force the Regulation 1/1959 and 2/1963 and 1/1970, it ousts the jurisdiction of the Special Deputy Collector sitting under Section 3 of Regulation 1 of 1959 and the matter has to be decided in accordance with the relevant provisions if any existed as on the date of such transfer and the relevant statute."

The scope and ambit of the provisions of the transfer of land in Agency tract had been well explained in detail in C.RAGHAVULU Vs. AGENT TO GOVERNMENT . As can be seen from the reasons

recorded by the Primary Authority, no objections in fact had been filed and while conducting enquiry though the document had been referred to, the Primary Authority had not recorded intelligible reasons and hence this Court is of the considered opinion that the Primary Authority had not exercised the quasi-judicial powers in accordance with law for want of proper application of mind and for non-recording of intelligible reasons. When the order of the Primary Authority itself is devoid of reasons, the same cannot be cured by the other authorities in the higher-up of the hierarchy and even otherwise this Court is thoroughly satisfied that in the light of the decisions referred supra and also in view of the fact that the original applicant was not afforded with proper or reasonable opportunity, this Court is of the considered opinion that the impugned orders made by the authorities in the hierarchy under the Regulation cannot be sustained since it would be just and reasonable to afford reasonable opportunity to the legal representatives of the original applicant who are prosecuting the present litigation and hence the impugned orders are hereby quashed and the matter is remitted to the Primary Authority to afford reasonable opportunity to the writ petitioners by putting them on notice and also providing them an opportunity of producing all the relevant material and examine the matter afresh in accordance with law.

The writ petitioners are bound to succeed and the Writ Petition is accordingly allowed to the extent indicated above. No order as to costs.

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P.S.Narayana.,J

Dt. –2-2005

L.R. copy to be marked : YES / No

AM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the Third day of February, 2005.

ASSISTANT REGISTRAR

To:

One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1. The Mandal Revenue Officer, Devipatnam,

East Godavari District.

2. The Director of Settlements, Hyderabad

3. The Commissioner of Settlements, Survey & Land Records,

Hyderabad.

4. The Settlement Officer, Rajahmundry,

East Godavari District.

5. 8 L.R. copies

6. The Under Secretary, Union of India, Ministry of Law, Justice

and Company Affairs, New Delhi.

7. The Secretary, A.P. Advocates Association Library, High court

Buildings, Hyderabad.

8. 2 C.Cs. to the Government Pleader for Social Welfare, High

Court of Andhra Pradesh, High Court Buildings, Hyderabad

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9. 2 C.D. copies.